

ARBITRATION OF EL TRIUNFO CLAIM

Protocol of agreement signed at Washington December 19, 1901

Approved and ratified by El Salvador February 22, 1902

United States notified of ratification by El Salvador February 24, 1902

Expired upon fulfillment of its terms¹

Treaty Series 400

Protocol of an Agreement between the Secretary of State of the United States of America and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Salvador for submission to arbitration of the claims against the Republic of Salvador of the Salvador Commercial Company and other citizens of the United States, stockholders in the corporations styled "El Triunfo Company, Limited" who have not acquired their stock from citizens of Salvador or others not citizens of the United States since the date of the filing of the Memorial of the Salvador Commercial Company.

The United States of America and the Republic of Salvador, through their representatives, John Hay, Secretary of State of the United States of America, and Don Rafael Zaldivar, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Salvador, have agreed upon and signed the following protocol:

Whereas, the United States of America, on behalf of the Salvador Commercial Company and of any and all of its citizens as described above, claim indemnity from the Government of Salvador for damages alleged to have been caused to such stockholders, as mentioned either in said Memorial, in the correspondence between the two Governments or in the report of the Solicitor of the Department of State, made to the Secretary of State; and

Whereas, the Government of Salvador denies any liability either to the Salvador Commercial Company or to any such citizens by reason of the acts and alleged grievances above referred to;

It is therefore agreed between the two Governments:

¹ On May 8, 1902, the arbitrators rendered an award of \$537,178.64 to the United States claimants.

I

That the said questions of law and fact brought in issue between the two Governments shall be referred to the decision of the Honorable Henry Strong, Chief Justice of the Dominion of Canada; the Honorable Don M. Dickinson, of Detroit, Michigan; and the Honorable Dr. David Castro, Chief Justice of the Supreme Court of Salvador, whose award in writing and stating the grounds of the decision shall be final and conclusive.

II

The arbitration tribunal shall sit at Washington, D.C., and shall hold its first session not later than the first day of April, 1902. A majority of the arbitrators shall be competent to act as well as to decide on all matters and questions submitted to the arbitral tribunal. Should either said Strong, Dickinson or Castro be unable to serve as arbitrator, in that event the place of the former shall be filled by agreement of the two Governments and of either of the two latter by the United States and Salvador respectively.

III

That within eighty days from the date of the signing of this protocol, each party shall furnish to the other and to each of the arbitrators a copy of the said Memorial and copies of all the documents, papers, accounts, official correspondence and other evidence on file at their respective Foreign Offices relating to said claims, and of all affidavits of their respective witnesses relating thereto, and the Department of State of the United States shall include among the documents thus transmitted by it copies of the report of its Solicitor in said case; and each party shall furnish in the manner aforesaid all books of account, contracts and papers of the "El Triunfo Company Limited" which may be in its possession or control: *Provided*, That said arbitration tribunal may request either Government to furnish such additional evidence as it may deem necessary in the interests of justice, and each Government agree to comply with said request; it may, also, in its discretion, allow all such pleadings to be filed as may be conducive to the full presentation and trial of the claims of the interested parties.

IV

The arbitration tribunal shall have full power to regulate the procedure and to take such action and make any such order as it may find necessary in the interests of justice. Each Government agrees to abide by such determination, and in default thereof, the said tribunal may proceed in such manner and at such times as it may determine, in order to close the proofs and make final and complete award. It shall also have power to appoint such officials to render such clerical and other assistance as it may find need-

ful, and fix the stipend therefor, as well as to provide for payment by the parties of all expenses incident to the arbitration.

V

Each of said Governments by their respective counsel, and the said stockholders by their attorney, may orally argue said cause and may severally submit to the said tribunal written arguments, copies of which shall at the same time be furnished to counsel of the other parties, with the right to reply, touching the questions of law and fact in issue, within thirty days from the date limited for the submission of the evidence; but the said tribunal shall not for such purpose in any event delay its decision beyond two months from the date of the submission to it of the evidence aforesaid, unless for good cause said tribunal shall find a longer period necessary, which shall in no event exceed three months.

VI

If said tribunal finds that any liability is established, it shall have full power to grant complete, just and legal relief to the parties; the damages awarded shall be fully compensatory but shall not include any which are merely speculative or imaginary. The tribunal may also pass upon the right of claimant to recover costs and reasonable attorney's fees and the award may bear interest at the rate of six per cent. per annum from the date when the damages are shown to have occurred. It shall bear interest at the rate of six per cent. per annum from the date of its rendition until paid.

VII

The award, if any, shall be payable, in American gold, as soon as the National Assembly of Salvador shall authorize the payment; but said authorization shall be made at its next ensuing regular session, in February, 1903. An extension of the time of its payment may be granted by the Government of the United States.

VIII

Reasonable compensation to the arbitrators for their services and all expenses incident to the arbitration shall be allowed and paid in equal moieties by said Governments.

IX

This protocol shall be submitted for approval and ratification by the Congress of the Republic of Salvador. When so approved and ratified, the Government of Salvador will immediately notify the Government of the United States thereof. Unless so approved and ratified and such notice is

given by the Government of Salvador on or before March 1st, 1902, this protocol shall be deemed null and void; and the United States will be at liberty to proceed diplomatically.

Done in quadruplicate in English and Spanish at Washington, this nineteenth day of December, 1901.

JOHN HAY
RAFAEL ZALDIVAR